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**ALLTEL**

ALLTEL ORIGINAL

March 27, 1997

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MAR 27 1997

Federal Communications Commission  
Office of Secretary

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Re: Implementation of the Telecommunications Act  
of 1996 - Carriers Use of CPNI  
CC Docket No. 96-115

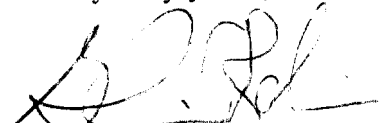
Dear Mr. Caton:

Enclosed for filing on behalf of ALLTEL Telephone Services Corporation, ("ALLTEL") please find an original and four (4) copies of its Reply Comments in connection with the above-referenced matter.

In response to the Commission's Public Notice, DA 97-385, (released February 20, 1997), I am submitting paper copies of ALLTEL's Reply Comments, as well as copies on a 3.5 inch diskette formatted in an IBM compatible form, using MS-DOS 5.0 and WordPerfect 5.1 software, in "read-only mode" to Ms. Janice Myles of the Common Carrier Bureau and International Transcription Services.

Please address any questions respecting this matter to the undersigned counsel.

Very truly yours,

  
Glenn S. Rabin

GSR/ss

Enclosures

cc: Ms. Janice Myles, Common Carrier Bureau  
1919 M Street, N.W., Room 544  
(w/ 2 copies of pleading and diskette)

International Transcription Services  
2100 M Street, N.W., Room 140  
(w/ 1 copy of pleading and diskette)

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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MAR 27 1997  
Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Implementation of the )  
Telecommunications Act of 1996: )  
) CC Docket No. 96-115  
Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other Customer )  
Information )

REPLY COMMENTS OF  
ALLTEL TELEPHONE SERVICES CORPORATION

ALLTEL Telephone Services Corporation ("ALLTEL") submits its reply in the above-captioned proceeding to comments submitted by various parties in response to the questions raised in the Commission's Public Notice, DA 97-385 (released February 20, 1997). In its comments, ALLTEL viewed the requirements of section 222 and 272 as imposing separate and distinct obligations on the Bell Operating Companies ("BOC") which must be met before a BOC may share CPNI with an affiliate. While, as a general proposition, ALLTEL did not believe that affirmative written consent was required under section 222 for the disclosure of CPNI among a carrier and its affiliates,

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ALLTEL argued that, in the wake of the Commission's Non-Accounting Safeguards Order, the nondiscrimination provision of section 272(c)(1), independently imposed the obligation on the BOCs to obtain the level of consent necessary to permit disclosure of CPNI to third parties before making CPNI available to its affiliates. ALLTEL further argued for a limited construction of section 272(g)(3) in order to retain the vitality of the nondiscrimination safeguard in section 272(c)(1).

Comments of various parties concurred with aspects of ALLTEL's approach,<sup>1</sup> particularly as to the differing standards required for disclosures among affiliates and for carriers of differing sizes. Indeed, the Competition Policy Institute ("CPI") adopts a position long advocated by ALLTEL: that independent LECs with less than 2% of the nation's access lines should have the opportunity for obtaining relief from regulatory burdens designed to restrain the conduct of far larger carriers.<sup>2</sup> CPI, however, advocates an overly burdensome regulatory regimen for the provision of CPNI to affiliates which is not required by the 1996 Act and which may ultimately further consumer frustration. BOC comments generally argued against any requirement to obtain third party consent to provide CPNI to unaffiliated entities prior

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<sup>1</sup> See Comments of USTA at pages 2-3 (affiliates need not be treated as third parties for purposes of disclosing CPNI and more stringent consent standards should apply for disclosure to third parties than for affiliates); Comments of Cincinnati Bell Telephone at page 3 (LEC affiliates should not be treated as third parties for CPNI disclosure purposes) and page 4 (section 272 applies only to the BOCs and may require a different standard than that imposed on non-BOC, independent telephone companies.)

<sup>2</sup> See Comments of CPI at page 9 (the incentive to discriminate in favor of an affiliate is particularly dangerous in the case of larger LECs; independent LECs with fewer than 2% of the nation's access lines should be permitted to obtain a waiver from the FCC requirements suggested by CPI). The acknowledgment of the different competitive status of companies with less than 2% of the nation's access lines by an independent advocacy organization like CPI is an event worthy of the FCC's consideration.

to making CPNI available to their BOC affiliate. The BOCs also argued that section 272(g)(3) provided a blanket exclusion from the antidiscrimination provisions of section 272(c)(1) for the joint marketing of permitted services.<sup>3</sup>

ALLTEL generally concurs with CPI's belief that the subscriber's, and not the carrier's, control over the use and distribution of CPNI is the paramount goal of section 222. CPI, however, suffers from an overly rigid construction as to both the form of the consent required and the services to which such consent applies under section 222(c)(1). As ALLTEL noted in its comments, express written consent (let alone written consent according to an FCC prescribed form) is not a requirement under section 222(c)(1); affirmative written consent is required only under section 222(c)(2). Consequently, and in view of the cited studies confirming consumer comfort with the use of CPNI by their chosen carrier,<sup>4</sup> there is no need to infer a requirement for the subscriber's written consent to CPNI use among the subscriber's existing carrier and its affiliates. ALLTEL's experience is that subscribers want to deal with those carriers that make it easiest to obtain quality service without the frustrations of constant solicitations, filing out forms or completing other paperwork. Despite the best of intentions, the result of CPI's proposal for express written consent may ultimately increase consumer dissatisfaction beyond their concern over the disposition of their CPNI. Many parties, including ALLTEL, have advocated the adoption of an "opt-out" proposal under which a consumer's consent to the intra-corporate distribution of CPNI

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<sup>3</sup> See, generally, Comments of Ameritech and Comments of Bell South.

<sup>4</sup> See Comments of USTA at footnote 1.

could be inferred after notice by the carrier to the consumer of the consumer's rights to control CPNI under the 1996 Act. In ALLTEL's view, this approach provides the consumer with the degree of control over CPNI which satisfies both the requirements of the 1996 Act and CPI's concerns.

The BOCs generally argue that the nondiscrimination standard of section 272(c)(1) is qualified by the rule of construction contained in section 272(g)(3).<sup>5</sup> In ALLTEL's view, the upshot of this argument is to permit the BOCs (rightfully the only companies to which section 272 applies) to exchange CPNI among affiliates with which they are engaged in joint marketing of permitted (and presumably competitive) service without regard to the principle of nondiscrimination. ALLTEL notes that had it been the intent of the Congress to provide a blanket exemption from section 272(c)(1) for permitted joint marketing activities, it could have presumably drafted a provision which explicitly so provided, but it did not do so. Rather, section 272(g)(3) is a rule of construction which must be limited in its application to its intended purpose.<sup>6</sup> The "unqualified view" of section 272(c)(1) should prevail -- where the BOCs want to jointly market permitted services with affiliates, they must likewise ensure that CPNI is

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<sup>5</sup> See, for example, Comments of Bell South at pages 2-7.

<sup>6</sup> See ALLTEL Comments at page 6.

available to unaffiliated carriers on a nondiscriminatory basis. The level playing field contemplated by the competitive safeguards contained in section 272 requires no less.

Respectfully submitted,

ALLTEL Telephone Services Corporation

By: 

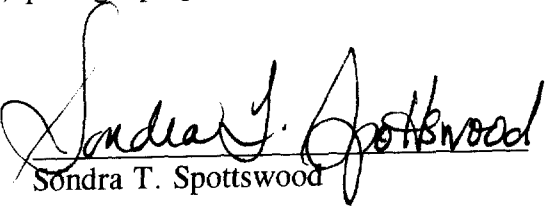
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Dated: March 27, 1997

**CERTIFICATE OF SERVICE**

I, Sondra T. Spottswood, hereby certify that a copy of the foregoing Reply Comments of ALLTEL Telephone Services Corporation was mailed this 27th day of March, 1997, via U.S. mail, first-class, postage prepaid, to the individuals on the attached list, unless otherwise noted.

  
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